

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PETER M. ARENA,

Plaintiff,

v.

CERVANTES, *et al.*,

Defendants.

Case No. 1:21-cv-00928-NONE-BAM (PC)

ORDER GRANTING PLAINTIFF'S SECOND
MOTION TO RETURN OVERPAYMENT OF
FILING FEES

(ECF No. 20)

Plaintiff Peter M. Arena ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Cervantes, Berlanga, Cerda-Jirano, Moreno, and Ceja for excessive force in violation of the Eighth Amendment.

On September 13, 2021, Plaintiff filed a motion to return overpayment of filing fees. (ECF No. 11.) In his motion, Plaintiff states that his aunt, Angela Cotten, paid the remaining filing fee in this action by check.¹ (ECF No. 11.) However, CDCR continues to deduct money from his trust account towards this filing fee, even though it has been paid in full. Plaintiff requests that the Court issue an order notifying the prison trust office to stop deducting money

¹ The motion also states that Ms. Cotten paid the remaining filing fee in *Arena v. Navarro*, Case No. 1:20-cv-00617-BAM. The Court will address the motion by separate order in the other action.

1 from his account towards the filing fee, and to return any overpaid funds. (*Id.*)

2 On September 15, 2021, the Court reviewed the motion and investigated Plaintiff's filing
3 fee balance for this action, and confirmed that Plaintiff's filing fee had been paid in full. (ECF
4 No. 12.) The Court informed CDCR that Plaintiff had paid his filing fee for this action in full,
5 and informed Plaintiff that the overpayment would be refunded the next month. (*Id.*)

6 Currently before the Court is Plaintiff's second motion to return overpayment of filing fee,
7 filed October 29, 2021. (ECF No. 20.) In his motion, Plaintiff states that his aunt, Angela
8 Cotten, has not received a refund. (*Id.*)

9 Plaintiff is informed that the overpayment refund for this case has been processed.
10 However, the overpayment was made from Plaintiff's trust account, and the refund was therefore
11 sent to Plaintiff, not to Angela Cotten. CDCR may place a hold on the funds for a period of time
12 before they are deposited to Plaintiff's account, and this may explain any delay in receipt of the
13 overpayment.

14 Accordingly, Plaintiff's second motion for return of overpayment of filing fee, (ECF No.
15 20), is HEREBY GRANTED.

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17 IT IS SO ORDERED.

18 Dated: November 4, 2021

19 /s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE
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